

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ATS TREE SERVICES, LLC,

Plaintiff,

v.

FEDERAL TRADE COMMISSION, et al.

Defendants.

No. 2:24-cv-01743-KBH

**UNOPPOSED MOTION OF AMERICAN ACADEMY OF EMERGENCY MEDICINE  
FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO PLAINTIFF’S  
MOTION FOR STAY OF EFFECTIVE DATE AND PRELIMINARY INJUNCTION**

The American Academy of Emergency Medicine (AEEM) respectfully moves this Court for leave to file the accompanying brief as an *amicus curiae* in support of Defendant Federal Trade Commission (FTC) and in opposition to Plaintiff’s motion for stay of effective date and preliminary injunction. For the reasons described below, the proposed brief contains relevant material that may aid the Court in resolving the issues raised by Plaintiff’s motion. Counsel for the Parties have been consulted regarding this motion, and all Parties consent to this motion.

“The extent to which an *amicus* participates in a pending action is solely within the ‘broad discretion’ of the district court.” *Wharton v. Vaughn*, 2020 WL 733107 (E.D. Pa. 2020) *quoting* *Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995). “A court may grant leave to appear as an *amicus* if the information offered is ‘timely and useful.’” 162 F.R.D. 34, 36 (M.D. Pa. 1995) (internal quotation marks omitted).

*Amicus* is uniquely positioned to opine on the FTC’s Non-Compete Clause Rule, 89 Fed. Reg. 38,342 (May 7, 2024) (the “Rule” or “Final Rule”), given its membership’s experience with such agreements. AAEM is a three decade-old organization representing more than 8,000 board-certified emergency room physicians across the country. In Pennsylvania, we have 640 members.

AAEM was established in 1993 to promote fair and equitable practice environments necessary to allow emergency physicians to deliver the highest quality of patient care.

This case involves challenges to a rule promulgated by the FTC pursuant to Sections 5 and 6(g) of the Federal Trade Commission Act. AAEM has extensive experience with non-compete agreements in the context of emergency medicine. Our organization is interested in this topic and the outcome of this litigation because many of our members are bound by non-compete agreements. These agreements negatively impact our physician members and their patients. Ensuring that the Final Rule becomes effective immediately, without delay, will significantly benefit patient access to care, patient quality-of-care, overall innovation in the healthcare sector, our membership, and the public interest. AAEM seeks leave of the Court to submit this brief in order to share the benefit of its members' experience and expertise, and to provide information that is otherwise unlikely to be brought to the Court's attention by the Parties.

### CONCLUSION

The Court should grant *amicus* leave to file the attached brief in support of Defendants and in opposition to Plaintiff's motion for stay of effective date and preliminary injunction.

DATED: June 18, 2024

Respectfully submitted,

/s/ Robert S. Kitchenoff

Robert S. Kitchenoff

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2024, I electronically filed this document using the ECF System, which will send notification to the ECF counsel of record.

/s/ Robert S. Kitchenoff

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